

DOCKET FILE COPY ORIGINAL

Commenter: WorldCom, Inc.  
Applicant: BellSouth  
State: Louisiana  
Date: August 4, 1998

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION**

In the Matter of

Applicant by BellSouth  
Corporation et al. for Provision of  
In-Region, InterLATA Services in  
Louisiana

)  
)  
)  
)  
)  
)

CC Docket No. 97-2

**RECEIVED**

AUG - 4 1998

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

**COMMENTS OF WORLDCOM, INC., IN OPPOSITION TO  
BELL SOUTH'S SECOND APPLICATION FOR INTERLATA AUTHORITY  
IN LOUISIANA**

Catherine R. Sloan  
Richard L. Fruchterman, III  
Richard S. Whitt  
WORLDCOM, INC.  
1120 Connecticut Avenue, N.W.  
Washington, D.C. 20036-3902

Andrew D. Lipman  
Robert V. Zener  
Swidler Berlin Shereff Friedman, LLP  
3000 K Street, N.W., Suite 300  
Washington, D.C. 20007-5116  
202 - 424-7500

Attorneys for WorldCom, Inc.

Dated: August 4, 1998

*OG*

## **EXECUTIVE SUMMARY**

To qualify for Track A, BellSouth relies on interconnection agreements with PCS providers and competitive wireline carriers who provide facilities-based service to business but not residential customers. This is not a sufficient basis for Track A status. Track A requires competitive wireline carriers supplying service predominantly over their own facilities to residential as well as business customers. Nor do PCS providers qualify. Their interconnection requirements are significantly different from those of wireline CLECs, and typically do not involve several items on the competitive checklist. Their presence in the market provides little operational experience relevant to the feasibility of CLEC interconnection and is not a basis for concluding that BellSouth's promises of checklist compliance will work out in actual practice.

Moreover, PCS providers sell a complementary service to a niche market that is not a realistic competitive alternative to the vast majority of telephone users. Nor do the studies submitted by BellSouth establish that PCS service is competitive with wireline in Louisiana. In any event, the application must be denied because BellSouth has not demonstrated compliance with the competitive checklist.

First, the OSS performance measurements BellSouth proposes are insufficient in several respects, including failure to disaggregate by markets or by type of loop, to report the speed of providing rejected query notices, to measure discrimination in jeopardy notices and to disaggregate billing information, to provide reports to potential entrants, and to provide for audits.

Commenter: WorldCom, Inc.  
Applicant: BellSouth  
State: Louisiana  
Date: August 4, 1998

Second, in WorldCom's experience, BellSouth's OSS performance has been seriously deficient. The problems appear to reflect patterns of conduct, and involve aspects of performance that would not be captured by the proposed performance measurements.

Third, BellSouth has not shown that it will exercise its "right to disconnect" under the Eighth Circuit's recent decision in a manner consistent with its obligations to refrain from discrimination and to provide access in a manner that allows requesting carriers to combine elements to provide telecommunications service. BellSouth's insistence on disconnecting by physically separating wires, rather than utilizing electronic controls, not only imposes unneeded costs, but is discriminatory because BellSouth uses electronic controls when it disconnects and reconfigures for its own purposes.

Finally, the public interest requires denial of the application. Once BellSouth obtains interLATA authority, it will be an easy matter for it to offer its existing local exchange customers a full service package including long distance. By contrast, local exchange competitors in Louisiana face a long and uncertain road even if BellSouth complies with its OSS performance requirements, before they can offer full service packages, including local service. And since BellSouth has proposed no self-executing enforcement mechanisms, it could violate these requirements and

Commenter: WorldCom, Inc.  
Applicant: BellSouth  
State: Louisiana  
Date: August 4, 1998

continue to accumulate market advantage while enforcement actions were being litigated. The Commission's goal should be to ensure that changing local carriers will be as easy as changing long distance providers. Until that happens -- and Louisiana is very far from that goal -- allowing BellSouth into the long distance market would create a lopsided market, depriving consumers of any real competitive choice.

## TABLE OF CONTENTS

EXECUTIVE SUMMARY .....	i
INTRODUCTION .....	1
I. BELL SOUTH HAS NOT DEMONSTRATED ELIGIBILITY FOR TRACK A. ....	5
A. Competing providers serving residential customers only by resale do not qualify under Track A. ....	5
B. PCS providers do not qualify as competing providers for purposes of Track A. ....	7
C. BellSouth has not shown that PCS providers are competitive with wireline service in Louisiana. ....	8
II. THE PERFORMANCE MEASUREMENTS BELL SOUTH PROPOSES ARE NOT SUFFICIENT. ....	11
A. Geographic level for reporting .....	11
B. Pre-Ordering Measurements .....	13
C. Ordering and Provisioning Measurements .....	14
D. Repair and Maintenance Measurements .....	15
E. Billing Measurements .....	16
F. Reporting Procedures .....	16
III. BELL SOUTH HAS NOT DEMONSTRATED ADEQUATE OSS PERFORMANCE .....	17
IV. BELL SOUTH HAS NOT SHOWN THAT IT WILL EXERCISE ITS RIGHT TO DISCONNECT PREVIOUSLY-COMBINED NETWORK ELEMENTS IN A NONDISCRIMINATORY MANNER THAT ALLOWS REQUESTING CARRIERS TO COMBINE THE ELEMENTS TO PROVIDE TELECOMMUNICATIONS SERVICE. ....	19
V. BELL SOUTH'S ENTRY INTO THE INTERLATA MARKET AT THIS TIME WOULD HARM THE PUBLIC INTEREST. ....	27
CONCLUSION .....	33

Commenter: WorldCom, Inc.  
Applicant: BellSouth  
State: Louisiana  
Date: August 4, 1998

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION**

In the Matter of	)	
	)	
Second Application by BellSouth	)	
Corporation <u>et al.</u> for Provision of	)	CC Docket No. 98-121
In-Region, InterLATA Services in	)	
Louisiana	)	

**COMMENTS OF WORLDCOM, INC., IN OPPOSITION TO  
BELL SOUTH'S SECOND APPLICATION FOR INTERLATA AUTHORITY  
IN LOUISIANA**

WorldCom, Inc. hereby submits its comments on the second Section 271 application for in-region interLATA authority in Louisiana filed by BellSouth Corporation et al. ("BellSouth") on July 9, 1998.

**INTRODUCTION**

WorldCom, Inc., through its wholly-owned subsidiaries WorldCom Technologies, Inc., MFS Telecom, Inc., WorldCom Network Services, Inc. (d/b/a WilTel Network Services), and UUNET Technologies Inc. (collectively "WorldCom"), provides a full range of telecommunications and information services, including local, intrastate, interstate, and international services. WorldCom is a leading provider of long distance service and competitive local exchange service in the United States. WorldCom currently provides competitive local exchange service in five states in BellSouth's region: Georgia, Florida, Mississippi, Tennessee and North Carolina. WorldCom -- with its traditional long distance operations, its competitive local exchange carrier ("CLEC") business, and

Commenter: WorldCom, Inc.  
Applicant: BellSouth  
State: Louisiana  
Date: August 4, 1998

its UUNet Internet service provider affiliate -- is uniquely positioned to take advantage of the opportunities presented by the 1996 Act to bring a wide range of choices for telecommunications and information services to customers everywhere.

The ability of WorldCom and others to provide competing local exchange and full service offerings to all customers, especially residential customers and those in rural areas, depends largely on the success of the BOCs' implementation of the 1996 Act. In particular, WorldCom needs nondiscriminatory access to BellSouth's unbundled network elements, at cost-based rates, with the ability to combine those elements in any technically feasible configuration with each other and with WorldCom's own facilities. WorldCom also needs access to BellSouth's operational support systems ("OSS") that give it the practical, as well as the theoretical, ability to be a local service provider using BellSouth's network. As BellSouth's Section 271 application makes clear, however, competitive conditions are a long way from the point at which the Commission can declare that the Act is fully implemented and the opportunities it provides for competitive entry into the local market are truly available.

Initially, the application is defective because it seeks authority under Track A, primarily in reliance on the presence of PCS providers in the market. PCS providers are not "competing providers" for purposes of eligibility for Track A, because their access and interconnection requirements are significantly different from those of wireline competitors, and because the services they offer are not a substitute for wireline service. In addition, the data submitted by BellSouth fails to show that PCS providers compete with wireline service in Louisiana.

Commenter: WorldCom, Inc.  
Applicant: BellSouth  
State: Louisiana  
Date: August 4, 1998

Moreover, the measurements BellSouth proposes for its OSS performance are insufficient in several respects, including failure to disaggregate essential information, to report the response time for rejected query notices, to measure discrimination in jeopardy notices, and to provide for performance report audits.

The insufficiency of these measurements is particularly serious, because, in WorldCom's experience, BellSouth's OSS performance has been seriously deficient. The deficiencies appear to be part of a pattern of behavior, not just isolated incidents. And the deficiencies occur in areas that would not be reflected by BellSouth's proposed performance measurements.

In addition, BellSouth's proposal to physically disconnect, rather than electronically disconnect, combined network elements violates the checklist, because it discriminates in favor of its own operations (where electronic disconnection is the norm).

Public interest factors also dictate denial of the application. By relying on its regionwide performance to support the application, BellSouth clearly expects this application to be a precedent for obtaining Section 271 authority throughout its region. Once it obtains interLATA authority, it will be an easy matter for BellSouth to provide long distance service to its local customers. It can take advantage of several competing nationwide interexchange networks and an automated primary interexchange carriers change process which has the capability of switching long distance carriers for more than 30 million customers annually.<sup>1</sup> The local exchange market in Louisiana and the rest of

---

<sup>1</sup> Motion of AT&T to be Reclassified as a Non-Dominant Carrier, 11 FCC Rcd 3271 (1995) at ¶ 53.



BellSouth's region, where only a tiny fraction of local customers have been moved from one provider to another, stands in stark contrast. The Commission's goal should be to ensure that changing local carriers will be as easy as changing long distance providers, and that consumers everywhere will have real choices of local and full-service providers.<sup>2</sup>

The danger of prematurely allowing BellSouth to provide in-region, interLATA service was explained vividly by Ameritech's Chief Executive Officer, who has been quoted as saying that

The big difference between us and them [GTE] is they're already in long distance. What's their incentive to cooperate?<sup>3</sup>

The Commission must not take away that incentive until the job of opening the local exchange to full competition is done.

---

<sup>2</sup> The FCC recognized the importance of this goal when it ordered incumbent LECs to switch a customer's local carrier as easily as its long distance carrier is switched today when the switch requires only a software change. Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, First Report and Order, 11 FCC Rcd 15499, 15711-12, ¶ 421 (1996) ("Local Competition Order"), modified on other grounds, Iowa Utilities Board v. F.C.C., 120 F.3d 753 (8th Cir. 1997).

<sup>3</sup> See "Holding the Line on Phone Rivalry, GTE Keeps Potential Competitors, Regulators' Price Guidelines at Bay," Washington Post, October 23, 1996 at C12.

**I. BELL SOUTH HAS NOT DEMONSTRATED ELIGIBILITY FOR TRACK A.**

**A. Competing providers serving residential customers only by resale do not qualify under Track A.**

To qualify for Track A, the RBOC must have have interconnection agreements with competing providers of "telephone exchange service . . . to residential and business subscribers." 47 U.S.C. § 271(e)(1)(A) (emphasis added). The Act then states that "such telephone exchange service may be offered . . . either exclusively over [the competitor's] own telephone exchange service facilities or predominantly over their own telephone exchange facilities in combination with the resale of the telecommunications service of another carrier." *Id.* (emphasis added). Since "such telephone exchange service" refers to the competitor's service to "residential and business subscribers," the plain meaning of the language is that the competitor must offer service to residential as well as business subscribers either exclusively or predominantly over its own facilities. The Department of Justice's position to the contrary depends on reading the Act to provide that Track A is satisfied when a competitor offers service exclusive or predominantly over its own facilities to "residential or business subscribers." That is not what the statutory language says.

The legislative history supports the plain meaning of the statutory language. The Conference Committee's Report on the 1996 amendments made it clear that Congress knew it had drafted Track A in a manner requiring facilities-based residential competition, and did so because it thought the technology for such competition was currently available.<sup>4</sup> As the House Committee explained,

---

<sup>4</sup> The Committee explained that it thought such competition could be provided by cable operators:

Congress did not intend that Track A status could be fulfilled by interconnection with a competitor with "an incidental, insignificant residential presence." House Report No. 104-204, at p. 77, reprinted in 1996 U.S.C.C.A.N. 43.

The plain language of Section 271(c)(1)(A) is also supported by the Congressional policy underlying Section 271. Congress knew that facilities-based competition was the most beneficial form of local competition. Congress also knew that offering the RBOCs the inducement of interLATA entry was the best hope for inducing the type of cooperation necessary to make facilities-based competition feasible. Finally, Congress intended the benefits of local competition to be available to residential as well as business customers. That is basically why Congress wanted a facilities-based competitive presence for both business and residential customers before allowing the RBOCs interLATA entry. To conclude that a facilities-based presence for business customers alone is sufficient, would be to conclude that the Section 271 incentive for RBOCs to facilitate local competition exists for the benefit of business customers only. That is contrary to the language and intent of Section 271.

---

[The House Committee] pointed out that meaningful facilities-based competition is possible, given that cable services are available to more than 95 percent of United States homes. Some of the initial forays of cable companies into the field of local telephony therefore hold the promise of providing the sort of local residential competition that has consistently been contemplated.

House Conf. Rep't No. 104-458 at 148, reprinted at 1996 U.S.C.C.A.N. 160 (1996).

**B. PCS providers do not qualify as competing providers for purposes of Track A.**

To establish eligibility for Track A, BellSouth relies primarily on its interconnection agreements with five PCS providers. In BellSouth's previous application, the Commission concluded that "section 271 does not preclude the Commission from considering the presence of a PCS provider in the particular state as a 'facilities-based competitor.'" BellSouth Louisiana Order, ¶ 72.<sup>5</sup> To support this conclusion, the Commission analyzed the exclusion of cellular carriers set forth in the last sentence of section 271(c)(1)(A), concluding that the exclusion did not extend to PCS providers.

In its comments on BellSouth's first application, WorldCom had argued that PCS providers could not be considered "competing providers" for reasons not related to the exclusion in the last sentence of section 271(c)(1)(A). WorldCom argued that PCS providers do not connect to the incumbent network in a manner giving rise to most of the checklist issues, while these issues are of concern when wireline carriers connect, and thus PCS providers do not provide the type of operational interconnection experience that Track A was designed to ensure as a basis for assessing checklist compliance. In addition, WorldCom argued that Congress viewed PCS service as complementary rather than competitive, as evidenced by the exclusion of PCS from the interLATA restrictions in sections 271(b)(3) and (g)(3). Finally, WorldCom argued that the intent of the checklist was to ensure that local exchange markets are open to competition in a manner allowing previously precluded competitors to enter, and PCS providers do not fall in the category of previously

---

<sup>5</sup> Application by BellSouth Corporation et al. Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services in Louisiana, 13 FCC Rcd 6245 (1998) ("BellSouth Louisiana Order").

precluded competitors because ILECs had been required to interconnect with them in 1994. See WorldCom Comments dated November 25, 1997 on BellSouth's First Application (CC Docket 97-231) at 5-11.

We believe that the Commission's ruling on this issue in the First Application was erroneous, because it focused solely on the exclusion last sentence of section 271(c)(1)(A), without taking other considerations into account. However, in view of that ruling, we shall only reiterate our prior position without further elaboration, and proceed directly to the issue of whether BellSouth has shown as a factual matter that PCS service is competitive with wireline in Louisiana.

**C. BellSouth has not shown that PCS providers are competitive with wireline service in Louisiana.**

To establish that PCS providers are competing with its wireline service, BellSouth relies on two studies. Neither is sufficient to show that PCS and wireline are competitive in Louisiana.

One of the studies concludes that up to 15% of residential wireline customers in the New Orleans metropolitan area have usage patterns which make PCS price competitive with wireline. "Competitive Analysis of PCS Offerings in the New Orleans Major Metropolitan Area," atch. to Bannerjee Aff't ("Bannerjee Study). There are two related problems with this study.

First, the study ignores the initial cost of purchasing PCS equipment, which, as the study concedes, "could conceivably deter many wireline residential customers from switching to PCS when such switching occurs for price reasons alone." Bannerjee Study at 23-24. Of course, there would also be an equipment cost for a second wireline phone or a wireline phone at new premises (although

its cost is not likely to be as high as the cost of PCS equipment, even at discount rates – see Bannerjee Study at 24 n. 29). But that means that PCS phones become competitive only for that portion of the 15% of allegedly "price-competitive" residential wireline customers who are considering a second phone or are ordering service from new premises. Absent figures on what portion of total residential consumers that fraction of 15% represents, there is no basis for assuming that PCS represents significant competition.

Moreover, the existence of PCS competition for any portion of that 15% segment is dubious, given these customers' usage patterns. The usage patterns for which the Bannerjee Study finds PCS to be competitive are quite low – a maximum of 115 ingoing and outgoing minutes of local calling a month (or roughly 57 minutes of outgoing calls a month), and lower levels if the customer also has intraLATA minutes. Bannerjee Study at 22. It would seem extremely unlikely that a customer who averages less than 2 minutes of outgoing calls a day would be considering a second phone, or would be indifferent to the initial cost of PCS equipment. It is more likely that persons considering a second phone would be concerned about high patterns of usage, far exceeding the 2-minute per day level at which Dr. Bannerjee finds PCS to be price competitive.

In that connection, Dr. Bannerjee notes that he has surveyed residential customers only, and suggests that the portion of business customers for whom PCS may be price competitive may be higher than 15%, because business customers pay higher wireline rates. Bannerjee Study at 23. But business customers are even less likely than residential customers to have a calling pattern of 2 minutes outgoing calls (4 minutes total incoming and outgoing) or less a day, and thus fall within the

segment of users for which Dr. Bannerjee finds PCS to be price competitive. Dr. Bannerjee presents no data suggesting that PCS would be competitive at the much higher rates of local calling likely for business customers. Absent such data, his study shows only that PCS is not likely to be price competitive for business customers.

The other study BellSouth relies on is a study prepared by M/A/R/C Research, based on interviews with PCS users. ("M/A/R/C Study"). The most obvious defect in this study is that the persons surveyed were those who responded to two newspaper ads. M/A/R/C Study at 2. These people cannot be regarded as a representative sample, since by the very act of responding to a newspaper ad about PCS usage they exhibited a heightened degree of interest in and commitment to PCS.

Even among this artificial sample of persons with a heightened interest in PCS, the results do not show that PCS is a competitor with wireline service. Only 16% of the sample (32 people) said they subscribed to PCS instead of wireline.<sup>6</sup> By far the largest proportion of this sample (84%) say that they use PCS as an alternative when they are away from home or their place of business, rather than using wireline service of friends and business associates. M/A/R/C Study at 4.

When PCS is used as a means of calling when away from the user's home or place of business, it is a service that complements, rather than substitutes for, wireline service. The Commission has made it clear that PCS is not considered a competitive service when it offers

---

<sup>6</sup> 6% of the sample subscribed to PCS rather than wireline when initiating service; 5% added PCS instead of a second wireline, and 5% replaced wireline with PCS. M/A/R/C Study at 4. That adds up to 16%, assuming no overlap, or 32 customers out of 202.

"products that largely complement, rather than substitute for, wireline local exchange." Application of NYNEX Corp. Transferor and Bell Atlantic Corp. Transferee, for Consent to Transfer Control of NYNEX Corp. and Its Subsidiaries, 12 FCC Rcd 19985, ¶ 90 (1997). Of course, any "complementary" service may "cannibalize" the wireline system by taking calls that might otherwise have been made on a wireline phone. But as long as the PCS system is used primarily to serve the user's need for mobility, it is complementary rather than competitive with wireline. Otherwise, the distinction the Commission has made between complementary and competitive service would lose all meaning.

Finally, BellSouth cites industry ads and press releases touting PCS as a substitute for wireline service. BellSouth Brief at 12. But the Commission has recognized that PCS may be "in the process of making the transition" from a complementary to a competitive service. BellSouth Louisiana Order, ¶ 73. Obviously, the industry in its press releases and ads wants to hasten that transition. But self-serving promotional industry claims supporting business or corporate purposes do not substitute for factual data to show that competition between PCS and wireline actually exists. To date, such data is lacking.

## **II. THE PERFORMANCE MEASUREMENTS BELL SOUTH PROPOSES ARE NOT SUFFICIENT.**

### **A. Geographic level for reporting**

BellSouth proposes to report most of its performance measures on a state and regional Level. Stacy Performance Aff't Exh. WNS-1 at pp. 7, 10, 13, 14, 15, 18, 22, 23, 25, 32, 34, 39, 41. The



exceptions are Pre-Ordering and Ordering OSS, Average Answer Time - Repair Centers, and Invoice Timeliness, for which BellSouth proposes reporting on a regional level only. *Id.* at pp. 3, 21, 27.

WorldCom continues to believe that "performance measurements should be reported on a geographically relevant basis - market by market."<sup>7</sup> New entrants are attempting to compete with BellSouth on a market-by-market basis, with the obvious result that discrimination would occur on a market-by-market basis. Performance measurements and reporting requirements will have the best opportunity to detect that discrimination if designed for the same level on which the discrimination is occurring.

The fact that the application to enter the interLATA market is made on a state-wide basis should not dictate the level of performance measurement and reporting. If performance is measured and reported on a state-wide basis, the reports will work against the goal of detecting discrimination by BellSouth against competitors. The aggregate state-wide results could very well mask what is taking place in the markets where competition is occurring. In fact, such state-wide reporting may give BellSouth the perverse incentive to hide the superior service that they provide to themselves in competitive areas by degrading their quality of service in areas where they do not face competition.

MSAs are the most convenient measure of markets. Accordingly, in order to best detect

---

<sup>7</sup> WorldCom Comments on Notice of Proposed Rulemaking, Performance Measurements and Reporting Requirements of Operations Support Systems, Interconnection, and Operator Service and Directory Assistance, CC Docket No. 09-56, RB 9101 ("Performance Measurements NPRM"), at 10.

discrimination, the Commission should require a market approach using MSAs as recommended by LCUG.<sup>8</sup>

## **B. Pre-Ordering Measurements**

BellSouth proposes a single pre-ordering measurement for legacy response time. Stacy Performance Aff't, Exh. WNS-1 at p. 2. However, that fails to measure and report the speed by which BellSouth provides rejected query notices to competing carriers as well as to itself. The Commission has noted that when a customer is on the line, "the timeliness of a rejected query notice is often critical," since the competing carrier's sales person "will not know whether the information is forthcoming or whether another query attempt is required." Performance Measurement NPRM at ¶ 45.<sup>9</sup> If BellSouth delays sending a rejected query notice, the new entrant's representative is left hanging, not knowing whether a response will be forthcoming. Long hold times while the customer is on the line, followed by the need to resubmit the query, will be frustrating to customers and competitors alike. In addition, the inefficiency created by repeated delay of rejected query notices would force the new entrant to have a larger than otherwise necessary work force. BellSouth should report this information so that potential discrimination can be detected and eliminated.

---

<sup>8</sup> See Local Competition Users Group Service Quality Measurements Version 6.1 (Sep. 26, 1997) at 5.

<sup>9</sup> Performance Measurements and Reporting Requirements for Operations Support Systems, Interconnection, and Operator Services and Directory Assistance, Notice of Proposed Rulemaking, FCC 98-72, 11 Communications Reg. (P&F) 51-5025 (rel. April 17, 1998) ("Performance Measurement NPRM").

### **C. Ordering and Provisioning Measurements**

Measurement and reporting for provisioning of loops should be broken down by the different types of loops, as suggested by LCUG, with separate reporting for 2-wire unbundled loops and all other loop types. As noted by the Commission, the 2-wire loops are generally used for POTS-type service, while other types may be more complex to provision and are more likely to be utilized by business customers. Performance Measurement NPRM at ¶ 50. BellSouth would have a heightened incentive to discriminate against the more complex loops, which are used more often in the provision of higher bandwidth (and higher revenue-generating) services. Separate measurement and reporting would enable competitors to determine whether they are being discriminated against with respect to one type of loop, discrimination that would be hidden if all loops are aggregated.

Along the same lines, it appears that BellSouth's reporting of ordering and provisioning would not capture T-1 circuits that are used by competitors to provide local service to large customers. Local service T-1s are ordered and provisioned through BellSouth's Access Service Request ("ASR") process rather than through the Local Service Request ("LSR") process that is used for unbundled local loops. BellSouth's Service Quality Measurements for ordering and provisioning appear to be based on LSRs, not ASRs. For example, when presenting statistics for May, 1998 ordering performance, BellSouth Exhibit WNS-3 provides data in three categories: mechanized LSRs, mechanized LSRs with errors, and non-mechanized LSRs. There is no mention of circuits ordered through the ASR process. Similarly, BellSouth's provisioning statistics capture interconnection trunks; residential, business, and design resale, and UNE design, non-design, and loops with LNP.

But there is no mention of the T-1 circuits used to provide local service to large customers. In fact, this deficiency appears to run throughout BellSouth's performance reporting. Failure to measure and report performance with regard to these circuits will enable BellSouth to discriminate against competitors who are attempting to provide local service to some of BellSouth's most valuable customers.

BellSouth proposes not to measure its own performance with regard to jeopardy notices, on the ground that "[t]here is no equivalent BST analog for Average Jeopardy & Percent Orders Given Jeopardy Notices." Stacy Performance Aff't, Exh. WNS-1, at p. 14. That assertion is simply not credible. Surely BellSouth does not make 100% of its order commitments on time, and surely there is some mechanism for advising its customers when it does not expect to make the scheduled date. Indeed, BellSouth's Affidavits describe such a mechanism. Stacy OSS Affidavit, ¶ 149, referencing Affidavits of Yingling, Shivanandan, and Narducci.<sup>10</sup> The Commission deserves a fuller explanation before accepting BellSouth's assertion that there is no analog in its operations for jeopardy notices.

#### **D. Repair and Maintenance Measurements**

For the reasons described above, repair and maintenance measurements should be disaggregated in the same manner as ordering and provisioning measurements. Aggregating to a

---

<sup>10</sup> Stacy asserts that "the service jeopardy information is available to CLECs in substantially the same time and manner as it is to BellSouth's retail units." Stacy OSS Aff't ¶ 149. If that is true, it would appear that BellSouth's performance with respect to furnishing its own retail units with service jeopardy information can be measured and compared to its performance with respect to the CLECs.

Commenter: WorldCom, Inc.  
Applicant: BellSouth  
State: Louisiana  
Date: August 4, 1998

higher level will potentially mask discrimination against service to high revenue generating customers.

BellSouth's proposed Customer Trouble Report Rate would measure the number of trouble reports, divided by the number of service access lines in service at the end of the report period. Stacy Performance Aff't Exh. WNS-1 at 23. That could mask discrimination against larger customers. Troubles should be tracked on a "per element" or "per circuit" basis. The attached Affidavit of Dawn Rovang recounts an incident in which a large law firm – a resale customer of WorldCom – lost service for a full business day. Obviously, this was a very serious matter, and should count for more than just a single trouble report.

#### **E. Billing Measurements**

Usage Data Delivery Accuracy and Usage Records Timeliness and Completeness should be disaggregated into local usage, exchange access usage, and alternately billed usage. These items are separated in the billing process, as the Commission has recognized. Performance Measurement NPRM, ¶ 89. Measuring billing performance in an aggregated manner may only serve to hide discrimination that is occurring in one area. A delay in the provision of information pertaining to any of these three categories will have an adverse effect on competitors.

#### **F. Reporting Procedures**

The Commission has tentatively concluded that only carriers that already obtain services or facilities from the incumbent LEC through an interconnection agreement or statement of generally available terms should have the opportunity to receive reports. Performance Measurement NPRM,

¶ 106. However, competition would be enhanced, with no burden to the incumbent, if reports on the incumbent's performance were required to be made available to prospective entrants. This sort of information is fundamental to establishing a competitive plan. In a competitive business environment, a vendor would provide this type of information to a prospective customer. Since BellSouth will already be providing this information to the CLECs, making it available upon request to a prospective entrant would be no additional burden. Nor would it compromise confidentiality, since the CLECs will have the information already.

In order to ensure compliance with the measurement and reporting rules, BellSouth's performance reports must be subject to periodic auditing. This is particularly critical where, as here, BellSouth is the only party with access to all of the data necessary to verify the reports and their methodology. Unfortunately, this is analogous to the classic situation of the fox guarding the hen-house. If an incumbent falls short in a particular area it will have a tremendous, perhaps overwhelming, incentive to "tweak" the data so that the results do not appear discriminatory. And particularly since the reports will not be regularly provided to the state regulatory agency or the Commission, the normal penalties for false reports to government agencies may not apply. In these circumstances, the prospect of detection through an audit would be particularly important to help deter such behavior.

### **III. BELL SOUTH HAS NOT DEMONSTRATED ADEQUATE OSS PERFORMANCE**

The inadequacies of BellSouth's performance standards are not merely academic quibbles. In fact, WorldCom has encountered patterns of BellSouth conduct which are deficient in ways that

would not necessarily be reflected in performance measurements and yet which have a serious and discriminatory effect on WorldCom's ability to obtain and service customers.

For example, WorldCom's local service provisioners, who order unbundled loops from BellSouth, have encountered a pattern of handling error rejections for complex orders which seems designed to prolong the process and irritate CLEC customers. The pattern is that an order will be rejected for the first error the reviewer encounters, sent back to BellSouth with that error corrected, and then rejected again for another error that was in the original order but not flagged. Affidavit of Kelly Coburn, attached, ¶ 3. Ms. Coburn states that "[t]his process can often continue for four to six cycles." Coburn Aff't ¶ 4. As a result, although each rejection takes about 48 hours, "it often takes longer than a week to submit an LSR [Local Service Request] successfully - sometimes much longer." Id. And yet, as long as each rejection is timely, this pattern of conduct would not be reflected in BellSouth's average response time. Ms. Coburn states that she "asked several of my BellSouth contacts why they insist on processing LSRs in this fashion" and was told by each of them that "they have been trained to reject the LSRs one error at a time and that this was BellSouth's corporate policy." Coburn Aff't ¶ 5.

WorldCom has also encountered a number of instances in which customers, after switching to WorldCom in situations where WorldCom is reselling BellSouth retail service, have encountered service problems that they state they never encountered when with BellSouth. These incidents are related in the attached Affidavit of Dawn Rovang. Since these were resale customers, the switch to WorldCom from BellSouth required no work on equipment and thus should not have caused service

Commenter: WorldCom, Inc.  
Applicant: BellSouth  
State: Louisiana  
Date: August 4, 1998

problems. In one of the incidents related by Ms. Rovang, the customer was a law firm with 47 lawyers, whose telephone service was down for an entire day. That incident also illustrates another point. While the service was restored within 12 hours of the first report, BellSouth's response was dilatory, and clearly not of the quality it would have given such an important customer had it been its own. But in the overall performance measure, this incident would count as only one trouble ticket. At the very least, trouble response performance should be measured by the number of elements or circuits involved, so that the seriousness of a late response will be magnified by the number of ultimate consumers affected.

Given the inadequacy of the performance measures proposed by BellSouth and the recent occurrence of incidents indicating that inadequate and discriminatory performance can occur in ways not fully captured by these standards, the Commission cannot rely on these standards to support a conclusion of adequate performance.

**IV. BELLSOUTH HAS NOT SHOWN THAT IT WILL EXERCISE ITS RIGHT TO DISCONNECT PREVIOUSLY-COMBINED NETWORK ELEMENTS IN A NONDISCRIMINATORY MANNER THAT ALLOWS REQUESTING CARRIERS TO COMBINE THE ELEMENTS TO PROVIDE TELECOMMUNICATIONS SERVICE.**

The Eighth Circuit has held that where a CLEC orders unbundled network elements that are connected in the ILEC's network, the ILEC may disconnect the elements before providing them to the CLEC. Iowa Utilities Board v. F.C.C., 120 F.3d 753, 813 (8<sup>th</sup> Cir. 1997), cert. granted 118 S.Ct. 879 (1998). While that issue is presently pending before the Supreme Court, for present purposes only we assume the Eighth Circuit's decision is correct. However, even under the Eighth Circuit's



decision, BellSouth's application is deficient because BellSouth has not demonstrated that it will exercise its new "right to disconnect" consistently with its other obligations under section 251 and the competitive checklist.

Two ILEC obligations under section 251 and the competitive checklist are particularly relevant to any exercise by BellSouth of its newly-established "right to disconnect": the obligation to provide "nondiscriminatory" access to network elements (§§ 251(c)(3), 271(c)(2)(B)(ii)), and the obligation to provide network elements in a manner that allows requesting carriers to combine them in order to provide telecommunications service (§ 251(c)(3)).

Nothing in the Eighth Circuit's decision authorizes BellSouth to violate these statutory obligations. Indeed, the Eighth Circuit made it clear that it expected the ILECs to comply with their legal obligation to "allow entrants access to their networks" in order to combine elements the ILEC has disconnected. Iowa Utilities Board, supra, 120 F.3d at 813. And this Commission, in its Order denying BellSouth interLATA authority in South Carolina, cited BellSouth's failure to show that it made available disconnected elements in a manner that allows competing carriers to combine them in a practical and nondiscriminatory manner. Application of BellSouth Corporation et al. Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services In South Carolina, 13 FCC Rcd. 539, ¶ 206 (1997) ("South Carolina Order").

BellSouth argues that it has fulfilled its obligations by enabling CLECs to utilize physical collocation in order to reconnect disconnected elements. BellSouth Brief at 38-41. This argument falls short, for at least three reasons.